



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

RUSTY MERRITTE DUNBAR,
Petitioner,

vs.

WARDEN ROBINSON,
Respondent.

§
§
§
§
§
§

CIVIL ACTION NO. 9:22-0783-MGL-MHC

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE PETITION WITHOUT PREJUDICE
AND WITHOUT REQUIRING RESPONDENT TO FILE A RETURN**

Petitioner Rusty Merritte Dunbar (Dunbar) filed this 28 U.S.C. § 2254 petition (the petition) against Respondent Warden Robinson (the Warden). Dunbar is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the petition be dismissed without prejudice and without requiring the Warden to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 2, 2022, but Dunbar failed to file any objections, even after having been given an extension of time to do so. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the petition is **DISMISSED WITHOUT PREJUDICE** and without requiring the Warden to file an answer or return..

To the extent Dunbar moves for a certificate of appealability, such request is **DENIED**.

IT IS SO ORDERED.

Signed this 20th day of April, 2022, in Columbia, South Carolina.

s/ Mary G. Lewis
 MARY G. LEWIS
 UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Dunbar is hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.